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Exhibit D

AECOM General Denial of JH Kelly Complaint

FILED

JUN 28 2019

CLERK OF THE SUPERIOR COURT
BY: G. HOYT, DEPUTY CLERK

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Attorneys for Defendant *AECOM Technical Services, Inc.*

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN THE COUNTY OF SHASTA

JH KELLY, LLC, a Washington limited
liability company,

Plaintiff,

v.

AECOM TECHNICAL SERVICES, INC., a
purported California corporation, and DOES
1 through 10, inclusive,

Defendants.

NO. 192600

**DEFENDANT AECOM TECHNICAL
SERVICES, INC.'S GENERAL
DENIAL TO COMPLAINT AND
AFFIRMATIVE DEFENSES
AGAINST PLAINTIFF JH KELLY,
LLC**

I. GENERAL DENIAL

Defendant AECOM Technical Services, Inc. ("AECOM"), in answer to the unverified complaint of Plaintiff JH Kelly, LLC ("JH Kelly"), and by virtue of the provisions of Section 431.30(d) of the California Code of Civil Procedure, now files its general denial to the Complaint, and in answering all the allegations of the Complaint, this answering defendant denies each and every allegation thereof.

II. AFFIRMATIVE DEFENSES

In addition to its general denial above, AECOM asserts the following affirmative defenses to each and every cause of action made against it by JH Kelly and without admitting it has the burden of proof on any of the issues raised below.

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FIRST AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action)

1. JH Kelly fails to state facts in its Complaint sufficient to constitute a cause of action against AECOM.

SECOND AFFIRMATIVE DEFENSE
(Indispensable Party – CCP Section 389)

2. JH Kelly's Complaint, and each cause of action alleged therein, are barred on the grounds that JH Kelly has failed to join Pacific Gas & Electric Company ("PG&E"), a necessary and indispensable party to this action, and the Complaint is thereby defective.

THIRD AFFIRMATIVE DEFENSE
(Breach of Contract)

3. JH Kelly has breached the Subcontract and therefore is not entitled to recovery against AECOM.

FOURTH AFFIRMATIVE DEFENSE
(Laches)

4. JH Kelly's claims, in whole or in part, are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE
(Waiver)

5. JH Kelly's claims, in whole or part, are barred because JH Kelly has waived, relinquished, and/or abandoned any entitlement to relief against AECOM regarding the matters that are the subject of the Complaint (and AECOM asserts no such entitlement exists) by failing to follow the terms of the Subcontract.

SIXTH AFFIRMATIVE DEFENSE
(Consent)

6. JH Kelly's claims, in whole or part, are barred by the doctrine of consent.

SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

7. JH Kelly's claims, in whole or part, are barred by the equitable doctrine of estoppel. JH Kelly has failed to comply with certain contractual requirements, refused to present

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2 and prosecute its claims against PG&E as required by the Subcontract, and is thus estopped from
3 asserting such claims against AECOM.

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5 **EIGHTH AFFIRMATIVE DEFENSE**
6 **(Unclean Hands)**

7 8. JH Kelly's claims, in whole or part, are barred by the equitable doctrine of
8 unclean hands. JH Kelly is responsible for damages resulting from its own acts or omissions,
9 including breaches of contract, including but not limited to its failure to timely and efficiently
10 prosecute the work.

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12 **NINTH AFFIRMATIVE DEFENSE**
13 **(Failure to Mitigate)**

14 9. If JH Kelly has suffered any damages, which AECOM expressly denies,
15 AECOM alleges that JH Kelly's recovery for those damages may be barred, in whole or in part,
16 by its failure to mitigate, reduce, or otherwise avoid its damages.

17
18 **TENTH AFFIRMATIVE DEFENSE**
19 **(Unjust Enrichment)**

20 10. JH Kelly's claims, in whole or part, are barred because it seeks relief that would
21 result in unjust enrichment of JH Kelly.

22
23 **ELEVENTH AFFIRMATIVE DEFENSE**
24 **(Offset)**

25 11. If AECOM has any liability to JH Kelly for the claims made in this action, which
26 AECOM expressly denies, AECOM is entitled to an appropriate set-off for the claims it has
27 asserted in its Cross-Complaint against JH Kelly and for claims that are the ultimate
28 responsibility of PG&E.

TWELFTH AFFIRMATIVE DEFENSE
(Apportionment)

12. If JH Kelly suffered any damages as alleged in the Complaint, those damages
were proximately caused and contributed to by persons or entities other than AECOM, including
but not limited to PG&E, such that the liability of all other responsible parties, named or

1
2 unnamed, should be apportioned relative to the degree of fault of each, and that the liability of
3 AECOM, if any, should be reduced accordingly, and furthermore, if JH Kelly recovers against
4 AECOM, AECOM is entitled to contribution from such third parties and/ or defendants, and
5 each of them.

6
7 **THIRTEENTH AFFIRMATIVE DEFENSE**
(Prompt Payment Laws)

8 13. AECOM's decision to withhold amounts from JH Kelly's invoices is justified
9 and supportable under California law. These withholdings were made in good faith, within
10 AECOM's rights under the Subcontract, and permitted by California's Prompt Payment Statutes.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**
(Ripeness)

12 14. JH Kelly's claims, in whole or in part, are not ripe for adjudication as JH Kelly
13 has failed to satisfy the required contractual dispute resolution process required by the
14 Subcontract.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**
(Failure to Satisfy Conditions Precedent)

16 15. JH Kelly's claims, in whole or in part, are barred because JH Kelly has failed to
17 satisfy the conditions precedent of the Subcontract, which requires JH Kelly to cooperate in the
18 presentment and prosecution of its claims against PG&E.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**
(Failure to Exhaust Contractual Remedies)

20 16. JH Kelly's claims are barred, in whole or in part, because JH Kelly has failed to
21 exhaust the dispute resolution procedures and remedies required by the Subcontract before
22 commencing this action.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**
(Intervening Cause)

24 17. All or part of the damages and/or losses alleged by JH Kelly were caused by acts
25 and conduct of other persons or entities, including but not limited to PG&E, which intervened
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2 between the acts and conduct of AECOM, and JH Kelly's alleged damages and/or losses, if
3 any, are therefore not recoverable from AECOM. In the alternative, any damages that JH Kelly
4 may be entitled to recover against AECOM must be reduced to the extent that such damages
5 are attributable to the intervening acts and/or conduct of persons or entities other than AECOM.

6
7 **EIGHTEENTH AFFIRMATIVE DEFENSE**
(Comparative Contribution)

8 18. JH Kelly's alleged damages, if any, were caused or contributed to, in whole or
9 in part, by the negligence, breach of contract, or other wrongful conduct of JH Kelly, or other
10 persons or entities not within the control of AECOM, including but not limited to PG&E. In the
11 event AECOM is held liable to JH Kelly, which liability is expressly denied, then JH Kelly's
12 recovery should be reduced in accordance with the principles of equitable indemnity and
13 comparative contribution to the extent that the negligence, breach of contract, or other wrongful
14 conduct of JH Kelly or other persons or entities that contributed to such damages.

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16 **NINETEENTH AFFIRMATIVE DEFENSE**
(Reservation of Rights)

17 19. AECOM reserves the right to amend its answer to assert further defenses that
18 are not presently known but may become known and available through further investigation
19 and discovery.

20 **III. PRAYER FOR RELIEF**

21 WHEREFORE, AECOM prays for the following relief:

- 22 1. For dismissal with prejudice of all claims and causes of action asserted by JH
23 Kelly;
24 2. For a judgment in favor of AECOM against JH Kelly;
25 3. That JH Kelly take nothing by way of its Complaint on file herein;
26 4. For an award of AECOM's costs and attorneys' fees as provided for by contract
27 or allowed by law;
28 5. For such other and further relief as the Court may deem just and proper.

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3 DATED this 28th day of June, 2019.
4

5 CARNEY BADLEY SPELLMAN, P.S.
6

7 By 
8

C. Scott Penner (SBN 124826)

9 Attorneys for Defendant AECOM Technical
10 Services, Inc.

11 AND
12

13 Robert M. Harding (SBN 101751)
14

15 Randall C. Nelson (SBN 138298)
16

17 Attorneys for Defendant AECOM Technical
18 Services, Inc.
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of California that I am an employee at Carr, Kennedy, Peterson & Frost, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

☒ Email and first-class United States mail, postage prepaid, to the following:

Mario R. Nicholas
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Attorney for Plaintiff JH Kelly, LLC
Tel: (503) 224-3380
Fax: (503) 220-2480


☐ Legal messenger service, for delivery on _____, to the following:

☐ Overnight mail service, for delivery on _____, to the following:

☐ Via court e-filing website, which sends notification of such filing to the following:

☐ Other _____

DATED this 28th day of June, 2019.


Randi Diem, Legal Assistant

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